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In our November issue Professor Keener was referred to as Dwight Professor of Law. In fact—the correction is made for purposes of record—Professor Keener holds the Kent, and Professor Burdick the Dwight Chair of Law.

NOTES.

SURVIVAL OF AN ACTION FOR LIBEL AGAINST A CORPORATION, AFTER DISSOLUTION.—That an action for libel survives the dissolution of a corporation and may be continued against the directors, in office at the time of such dissolution, as trustees, is the holding of *Shayne* v. *Evening Post Publishing Co.*, 168 N. Y. 70 (Oct. 1901), reversing the decision of the Appellate Division, 56 App. Div. 426. Counsel for the defendant moved that the suit be abated, as the corporation had expired by the limitation in its charter. The Appellate Division refused to revive the action against the trustees, on two grounds: First, because the Laws of 1875, c. 611, and Laws of 1892, c. 601, did not apply, and second, as stated by McLOUGHLIN, J. (p. 427), because "The general rule is, in an action to recover damages for personal injuries pending at the time of the death or dissolution of a defendant, the action abates and cannot revived." Two judges dissented, HATCH, J., on the ground that in an action against a corporation the remedy was not against the person, but against the corporate property, which could be followed in the hands of the trustees; and also, because of the precedent set by the case of *Hepworth* v. *Union Ferry Co.*, 62 Hun, 257 (1891), affirmed, although no opinion was written, by the Court of Appeals in 131 N. Y. 645. The Court of Appeals treats the case as one

of the first impression, PARKER, C. J., saying (p. 73): "Nor are we foreclosed by authority in this court from considering the question on its merits, for neither the diligence of counsel nor patient investigation on our part has brought to light any decision of this court bearing directly on the question." In reviving the action, the court based its decision approximately on the ground set forth by HATCH, J., *supra*, namely, that if recovery be had, the moneys required to satisfy the judgment would be taken from the assets of the corporation and, whether before or after dissolution, would in any event diminish the assets of the shareholders.

As a principle of abstract justice, this decision is doubtless beyond fault, but is there such a difference between the death of a natural person and that of a corporate entity as to prevent the survival of an action *ex delictu* against executors and to allow survival against the trustees of a corporation? At common law all actions of tort were ended by the death of either party *pendente lite*, and it was by statutory enactment alone that executors were rendered liable. The New York Revised Statutes (2 R. S. 447) providing for the maintenance of an action against the personal representatives of a wrongdoer, expressly except actions for libel and slander. Hence no question could have arisen as to the revival of the action in the principal case, had the defendant been a natural person. In New York by the "General Corporation Laws," § 30, the directors of the defunct corporation become trustees and are to divide the property among the shareholders, after paying the creditors of the corporation. Judging by the statute alone, we can see no difference between the death of an individual and the dissolution of a corporate entity. In *National Bank* v. *Colby*, 21 Wall. 609 (1874) at p. 615, FIELD, J., lays special emphasis on the analogy between the death of an individual and the dissolution of a corporation, saying: "Its existence was thereupon ended; it was then a defunct institution and judgment could no more be rendered against it in a suit previously commenced, than judgment could be rendered against a dead man."

In the principal case, in adverting to the rule, *Actio personalis moritur cum persona*, the court held that 2 R. S. 447, did not apply to corporations, and that actions for libel could be revived, distinguishing the cases on the ground that the reason for executors' non-liability is that they, in their personal capacity, have committed no wrong, whereas in a similar action against the trustees of a defunct corporation the remedy of the plaintiff is against the property of the corporation solely. This line of argument is based on the ground given in allowing a contract action to survive against executors, namely: "The object of the action *ex contractu* being to reach the property rather than the person, in which the executors have now the same interest that the testator had before, such action should be revived and continued" (p. 79). But, while the remedy is against the property of the shareholders in an action, either in tort or contract, the action of tort is, nevertheless, brought on account of the wrong done by the corporation, a wrong of which

the shareholders are as guiltless as would be the executors of a natural person in a similar case. It would be as well to say that, where executors are legatees under the will of the testator, they should be liable in damages for the tort of the deceased, since they profit by taking a share of his property. Such a proposition would lose sight of the fact that the action of tort, while remedial as viewed on the part of the plaintiff, must of necessity be based on a wrong done by the defendant. The cause of action in tort can not be considered as standing on the same basis as an action on contract, despite the holding in *Hepworth* v. *Union Ferry Co.*, *supra*, that peculiar result having been reached on account of a special provision in the charter of the ferry company, rendering it liable for action *ex delictu*, even after dissolution. This was pointed out in *Matter of Yuengling Brewing Co.*, 24 App. Div. 223 (1891); the latter case holding that the action for personal injury did not survive.

One further point, dwelt on by the Court, must be considered. In speaking of 2 R. S. 447, PARKER, C. J., says (p. 78): "Nor has the language of our statute which authorizes the continuance of certain actions for moneys against the executors and administrators of wrongdoers, but excepts actions for libel, slander, assault and battery and false imprisonment, been held to include the civil death of either individuals or corporations, and it is sufficient for our present purpose to say that such an intent on the part of the Legislature cannot be spelled out of the language employed by it." The dissolution of a corporation may be called a civil death in order to distinguish it from the physical dissolution of a human being, but in no way does it resemble the civil death of an individual. For, in the case of the individual, the person lives on after the civil death, while on the dissolution of the corporation, the entity or artificial being ceases to exist and can not be revived or reborn, save by an act of the Legislature. *National Bank* v. *Colby*, *supra*.

Hence, whether it be a person or a corporation which has done an injury, the effect of the death of the former or the dissolution of the latter should be identical; for, in each case, the entity of the wrongdoer has passed away and an action against executors on the one hand, or trustees on the other, would, in effect, tend to fasten pecuniary liability on persons who have done no wrong.

RATIFICATION BY AN UNDISCLOSED PRINCIPAL.—Roberts, a broker, was authorized by the defendant to buy wheat at 45s. 3d. Such purchase being impossible, he bought from the plaintiff at 45s. 6d., hoping that the defendant would take over the contract, and intending it to be for his benefit. The defendant approved Roberts' action, and took over the contract, but later refused to perform. On these facts the House of Lords has decided that the defendant acquired no right and incurred no liabilities on the contract by his attempted ratification, since Roberts did not *profess* to be acting